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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20006

FEB 17 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of the Commission's) RM-8577
Rules To Preempt State and Local)
Regulation of Tower Siting For)
Commercial Mobile Services Providers)

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COMMENTS OF GTE MOBILE COMMUNICATIONS, INC.
AND GTE MOBILNET, INC.

Katherine M. Holden
Stephen J. Rosen
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7245

Their Attorneys

February 17, 1995

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SUMMARY

GTE Mobile Communications, Inc. and GTE Mobilnet, Inc. (jointly, "GTE") agree with the Cellular Telecommunications Industry Association ("CTIA"), as reflected in CTIA's petition for rulemaking, that serious issues currently confront the commercial mobile radio service ("CMRS") industry with respect to the siting of antenna towers. In recent years, the wireless industry has rapidly grown in response to consumer demand, and the industry's high rate of growth is expected only to increase, as existing operations continue to expand and new personal communications services systems are constructed. The increase in the number of providers as well as the growth in the number of businesses and individuals served by CMRS operators has resulted in an expanding need for new tower sites on which to locate essential transmission equipment.

GTE recognizes at the same time that local governmental jurisdictions have legitimate concerns to address in seeking to establish policies and procedures for the construction of towers. There are important, valid, safety and aesthetic considerations that particular communities desire to address in their own individualized fashion when confronted with requests to locate a CMRS tower within the jurisdictional boundaries.

These competing sets of interests must be effectively balanced in order best to further the public interest. To do so, GTE suggests that the Commission convene representatives of the Commission, the wireless industry, urban planners, the National League of Cities, and state and local officials, for example, to develop consensus national standards to guide the location of CMRS towers and associated zoning decisions. Such standards should be designed to incorporate basic, uniform guidelines while permitting specific localities to tailor implementation to their unique needs and preferences. This national policy at the same time should provide certainty to CMRS operators, permitting them to undertake rational planning for their provision of publicly demanded services and providing assurances that tower sites will be reasonably available to ensure the provision of quality service to the public.

GTE urges the Commission to propose such an approach in a rulemaking on this issue. Pursuit of GTE's proposal will facilitate the attainment of a balance that best serves the public interest, consistent with the Commission's mandate under the Communications Act.

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COMMENTS OF GTE

GTE Mobile Communications, Inc. and GTE Mobilnet, Inc. (jointly, "GTE"), by their attorneys and on behalf of their wireless companies, hereby submit their comments in response to the above-referenced Petition for Rule Making filed by the Cellular Telecommunications Industry Association ("CTIA").¹ CTIA requests the Commission to propose rules under Sections 2(b) and 332 of the Communications Act, as amended,² "to preempt state and local governments from enforcing zoning and other similar regulations which have the purpose or effect of barring or impeding commercial mobile radio service ('CMRS') providers from locating and constructing new towers."³ GTE agrees with CTIA that tower siting is a critical issue for

¹ Amendment of the Commission's Rules To Preempt State and Local Regulation of Tower Siting for Commercial Mobile Services Providers, Cellular Telecommunications Industry Association's Petition for Rule Making, RM-8577 (filed Dec. 22, 1994) [hereinafter Petition]. Comments on the Petition were solicited by FCC Public Notice, Rpt. No. 2052 (Jan. 18, 1995).

² 47 U.S.C. §§ 152(b), 332.

³ Petition at ¶ 1.

CMRS providers, particularly in light of the deployment and expansion of both new (e.g., personal communications services ("PCS")) and existing (e.g., cellular, paging, and air-ground services) wireless technologies. GTE would like, however, to advance a different approach to ensure that consumer demand for wireless services and the public interest in tower zoning are properly balanced.

In examining the appropriate federal/state relationships in this area, GTE urges the Commission to pursue solutions that effectively balance the needs of CMRS operators with the legitimate concerns of states and localities regarding facility locations within their jurisdictions. GTE accordingly proposes a process whereby representatives of the Commission, the wireless industry, urban planners, the National League of Cities, and state and local officials, for example, can cooperatively develop architectural, design, and siting standards for CMRS towers.⁴ Ideally, these overarching standards will be flexible enough to accommodate the unique needs and preferences of specific urban, suburban, and rural areas, but will be predictable enough to allow CMRS operators to develop their infrastructure in a nationally coherent, publicly beneficial fashion. Ultimately, these

⁴ GTE would include in this category towers with antennas transmitting on CMRS frequencies as well as antennas transmitting on microwave (either private or point-to-point) used in support of the CMRS offerings.

standards should provide wireless service providers with predictability and economies of scale, communities with more acceptable tower placements, and end users with more readily available and less expensive wireless communications.

I. THE CTIA PETITION RAISES TWO SETS OF COMPETING PUBLIC INTEREST CONSIDERATIONS THAT MUST BE EFFECTIVELY BALANCED

A. The CMRS Marketplace, In Response to Consumer Demand for Services, Is Growing at an Exponential Rate

As the Commission is well aware, the wireless communications industry -- spurred in part by the Commission's own actions as well as marketplace demand -- is growing at an exponential rate. Existing wireless services have been adding subscribers at a phenomenal rate, and that growth is expected to continue. The Personal Communications Industry Association ("PCIA") recently predicted that cellular subscriptions would grow from over 23 million at year end 1994 to nearly 47 million in the year 2000 and over 65 million in the year 2005.⁵ PCIA estimates that paging and narrowband service subscriptions will grow at an even faster

⁵ PCIA 1995 PCS Technologies Market Demand Forecast Update (Personal Communications Industry Association, Washington, D.C.), Jan. 30, 1995.

pace, from over 24 million in 1994 to 56 million in 2000 and 92 million in 2005.⁶

At the same time, the Commission has been actively pursuing the auctioning and licensing of new PCS services. Again, PCIA projects substantial growth, from zero today to almost 15 million subscriptions in 2000 and nearly 40 million in 2005.

The increasing number of service providers, the growth in wireless subscriptions, and the maturation of existing systems mean that an ever-increasing number of antenna sites -- for both transmission and reception of signals -- are needed. New entrants seeking to launch new service offerings must identify antenna sites that can be used to build the system foundation. The increasing numbers of users need access to additional frequency paths. Maturing systems need to "fill in" their coverage areas and ensure access to service throughout a market.

Unless a robust, expanded wireless infrastructure is developed, customers' service quality expectations will not be met. They will be confronted with large "dead areas" where service is practically unavailable. Calls will be dropped and consumers will see increased waiting periods for placing a call. The resulting customer dissatisfaction will

⁶ Id.

frustrate a wireless industry that prides itself on the ability to deliver the highest quality of service possible.

Lack of access to necessary tower sites also will affect the types of wireless services that can be offered, likely impeding the establishment of new services and deployment of advanced technologies. This hindrance will adversely affect the ability of the public to take full advantage of wireless technology development and competition.

The expanded use of wireless communications has become an important part of our national economy and public safety network. In economic terms, wireless communications produces many jobs, both as a stand alone manufacturing and service industry and as a facilitator of growth in other industries. In addition, as evidenced by the Commission's recent E-911 proceeding,⁷ wireless communications are playing an increasingly important role in the provision of emergency services. Therefore, in order to meet consumer demand as well as ensure the availability of sufficient capacity to meet business, personal, and health and safety needs for wireless communications, the Commission must assure that the infrastructure supporting these communications is not compromised or unduly restricted.

⁷ See Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, 9 FCC Rcd 6170 (1994) (Notice of Proposed Rulemaking).

B. States and Localities Have Legitimate Zoning Considerations That Implicate Tower Siting

Juxtaposed against the need to maintain an effective wireless communications infrastructure in support of this nation's economic competitiveness and public safety network is the need of individual localities to maintain a sense of community through the establishment of their own unique aesthetic, health, and safety standards. As a Fairfax County, Virginia supervisor recently stated, "We are bumping into . . . two different quality of life issues: the issue of wanting to sustain an attractive esthetic environment, and the want to have the state-of-the-art [communication] tools available to all of us."⁸

At present, and as recognized in the CTIA Petition, CMRS operators must comply with regulations and requirements that vary from locality to locality. Indeed, a single service area may be affected by a host of different, even conflicting tower placement policies. Moreover, CMRS providers often must seek to comply with the applicable requirements on a one-on-one basis (since undue cooperation with competing licensees might pose questions about the level of effective competition in the market).

⁸ Michael Scully, N. Va. battle: High tech vs. esthetics, Fairfax Journal, Feb. 1, 1995, A1, at A6.

Clearly, carriers have in the past and can continue to work with local and county regulatory bodies in order to reach compromises with respect to CMRS antenna and tower placement. For example, in Greenville, South Carolina, one cellular carrier worked with the county planning commission over a six month period to develop, cooperatively, radio tower zoning regulations.⁹

Nonetheless, such jurisdiction-by-jurisdiction proceedings can be problematic for a number of reasons. First, the delays inherent in local proceedings might ultimately result in there being a substantial time lag between consumer demand for a provider's installation of expanded wireless infrastructure and a locality's grant of permission to proceed with tower construction and antenna installation. While the appropriate zoning or permit request is pending, the customers of the requesting operator may suffer from increasing degradation in their quality of service, a development with adverse impacts on customer satisfaction, economic development, and public safety. Second, some localities may not have the resources to undertake a careful and comprehensive study of efficient tower siting policies and procedures. Policies instead may be designed to meet concerns of political expediency, and

⁹ City Zoning Rule Limits Radio Tower Height, Telecommunications Reports, Jan. 23, 1995, at 31.

tend toward one extreme (prohibitions on towers) or the other (complete flexibility in tower construction, permitting the installation of inappropriately sited facilities). Finally, absent some FCC action, the rules for tower siting will undoubtedly vary widely amongst the thousands of American localities. Wireless providers will thus face unpredictability in the construction of essential facilities.

GTE recognizes that local jurisdictions have legitimate concerns to protect in connection with the location of communications facilities within their boundaries, involving issues such as tower setbacks, landscaping in tower areas, tower height limitations, and a clear fall zone. For its part, GTE has sought to work cooperatively with local jurisdictions to locate and design its facilities in a way that responds to the concerns of the community. In doing so, consistent with the discussion above, GTE has been confronted with a patchwork of regulations, and that makes GTE's planning more difficult. Moreover, GTE cannot ignore the possibility that some localities may seek narrowly to limit (or even ban) tower placement opportunities due to misplaced fears about the effects of radio transmissions or in a misguided effort to protect real estate values. GTE's perceptions and experiences underscore for it the importance of developing Commission policies that accommodate the needs of CMRS operators while also addressing the legitimate

concerns underlying the actions of many localities in seeking to establish coherent tower siting policies.

II. THE PUBLIC INTEREST WILL BEST BE SERVED BY THE
DEVELOPMENT OF CONSENSUS NATIONWIDE ZONING POLICIES
AFFECTING CMRS AND RELATED TOWER SITING

Rather than allow each locality to slowly and unevenly set its own tower siting standards, the Commission should take the lead in promulgating national, flexible standards that best serve the needs of both wireless providers and localities. GTE urges the Commission to convene a panel composed of representatives from its own staff, the communications industry, the National League of Cities and urban planning communities, and local and state governments. During the standards setting process, the Commission can serve both as a facilitator of discussions among these representatives and as a source of expertise on the technical aspects of wireless infrastructure.

The standards ultimately developed should be flexible enough to accommodate local differences, but firm enough to ensure wireless carriers reasonable access to tower sites under reasonable terms and conditions. For example, the promulgated standards might take into account and reflect different policies based on population density and geographic characteristics associated with the proposed tower site. In addition, the standards should allow localities enough

flexibility to undertake a certain amount of "customization" based on their unique aesthetic tastes. Within this flexible framework, however, wireless providers must be given the ability to build new infrastructure in a reasonably rapid time period and with reasonably predictable construction costs.

The standards and policies developed by this process should be applied to all areas of the country -- urban, rural, suburban. While urban zoning issues often have been highlighted in the discussions concerning communication tower locations, the balancing of the respective needs of wireless operators and rural and other non-urban communities will also benefit -- although perhaps in different ways -- from consensus national guidelines.

Provided that the wireless industry and localities enter into this contemplated process in good faith, GTE envisions that both sides will emerge victorious. The wireless industry will benefit from the ability to build out its infrastructure in a predictable time period and at a predictable cost. Localities will benefit from the comments of nationally renowned architects and urban planners, whose input should result in creative solutions to the issues surrounding tower siting. In addition, the citizens of each community will benefit from the provision of more reliable,

higher quality wireless service consistent with resolution of their zoning concerns.

As the wireless communications industry continues to expand, the Commission has a unique opportunity both to encourage this expansion and to respond to the needs of localities for safe and aesthetically pleasing tower sites. The development of a successfully competitive CMRS marketplace, the satisfaction of consumer demands for quality wireless services, and the resolution of local jurisdiction zoning concerns all should be more effectively satisfied under GTE's approach.

III. CONCLUSION

CTIA's Petition presents very legitimate concerns confronting the CMRS industry. To respond most effectively to the multiple considerations before it, GTE urges the Commission to propose the development of consensus national guidelines that effectively balance the respective needs and concerns of CMRS operators and state and local jurisdictions.

Refinement of this proposal through the rulemaking process
will best serve the needs of the public.

Respectfully submitted,

GTE MOBILE COMMUNICATIONS, INC.
and GTE MOBILNET, INC.

By: 

Katherine M. Holden
Stephen J. Rosen
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7245

Their Attorneys

February 17, 1995

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of February, 1995, I caused copies of the foregoing "Comments of GTE Mobile Communications, Inc. and GTE Mobilnet, Inc." to be mailed via first-class postage prepaid mail to the following:

Michael F. Altschul
Randall S. Coleman
Cellular Telecommunications Industry
Association
1250 Connecticut Ave., N.W.
Suite 200
Washington, D.C. 20036

Philip L. Verveer
Jennifer A. Donaldson
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Suite 600
Washington, D.C. 20036-3384


Elizabeth A. Nicholson